

*Spring 2020*

## IN THE ZONE

# Current Trends in Land Use Law



### 10 Steps for Conducting Remote Zoning Hearings During the COVID-19 Disaster Proclamation

1. Only Hold Necessary Hearings. The Governor and the Attorney General continue to encourage municipalities to postpone or cancel public meetings when possible. This includes zoning hearings. Accordingly, municipalities must consider whether it is necessary to hear a zoning application during the Stay-at-Home Order and why. This will be a fact-specific analysis, and the results will vary based on the application and the community. Communities should memorialize in writing any hearing postponements and share notice of the postponement with the applicant, media outlets, and interested members of the public. We recommend having applicants whose proposals will be heard remotely explain why a hearing is necessary and sign an agreement a) waiving any claims against the municipality, and b) indemnifying and holding the municipality harmless for third party legal challenges associated with the hearing.

2. Adopt Emergency Rules. The Governor temporarily suspended Open Meetings Act ("OMA") provisions requiring a quorum to be physically present to conduct a meeting. Many communities previously adopted rules governing when officials can remotely participate in meetings, how members of the public may participate in meetings, and how zoning hearings are conducted. We recommend that the corporate authorities or authorized hearing bodies adopt emergency rules aligning their practices with recent OMA guidance and make those emergency rules available on the community's website.

3. Secure an Open and Convenient Hearing Location (if meeting will not be entirely remote). The Governor has placed stringent limits on the number of people allowed to gather in any one place and imposed social distancing requirements on all gatherings. Many zoning hearings involve dozens - and in some cases, hundreds - of people. Communities that wish to conduct zoning hearings must consider whether and how the hearing will comply with gathering restrictions, including where the hearing will be held (e.g., gym, community center), how physical access to the hearing room will be regulated (e.g., 1 in, 1 out, staging room), and who could be permitted to physically gather without compromising public safety (e.g., staff, board members).

4. Identify Ways to Participate. It's best for communities to provide multiple ways to participate in a remote hearing. These might include teleconference (i.e., telephone), videoconferencing platforms (e.g., Zoom, GoToMeeting), streaming meetings on the community's website or on social media (e.g., Facebook Live or YouTube), and public access television. It's important to remember that not all interested parties have internet access, and that some members of the public may require accommodation due to disabilities. As a result, communities should provide multiple, redundant, and flexible ways for individuals to participate in hearings. All hearing participants must be able to view

documents and testimony provided during the hearing. They must also be allowed to present evidence during the hearing, ask questions of the applicant and other witnesses, cross-examine witnesses, and address the hearing body. Communities must keep this in mind when evaluating remote hearing platforms.

5. Advertise Ways to Participate - Public Notice. Meeting agendas, hearing notices, the municipality's website, and municipal social media feeds should identify ways in which the public can participate in the hearing. It's best to publicize these methods as early and frequently as possible, and to timely respond to public inquiries regarding hearing procedures.

6. Publicize Hearing Materials ASAP. Communities should make hearing materials (including plans, staff memos, and technical reports) available as soon as possible (i.e., more than 48 hours before the meeting). We recommend that all documents be identified by a distinct page number or other unique identifier that members of the public can easily follow during the remote hearing, and all parties speaking during the hearing should be reminded to refer to documents by page number. Meeting materials should be distributed and advertised as widely as possible, including posting the materials on the community's website and providing links to the website on the community's social media sites.

7. Identify Speakers Before the Hearing (if possible). Applicants should provide staff a list of individuals that plan to speak on their behalf during the hearing. Communities should also encourage members of the public to pre-register to speak before the hearing. Pre-registration will allow staff to grant speakers access to necessary technology and to work with speakers regarding hearing procedures. Pre-registration is voluntary and intended to help speakers navigate remote hearing procedures. Communities should make every attempt to accommodate speakers that fail to pre-register, including utilizing the waiting room features provided on some videoconferencing platforms. Strictly enforcing pre-registration requirements is discouraged. Communities may consider establishing interested party registries for controversial projects.

8. Designate a Hearing Administrator. Communities conducting remote hearings should designate a staff member to manage the remote hearing technology platforms, including muting or disconnecting public participants, controlling screensharing options, and responding to disruptive participants (e.g., "Zoom bombing"). It's best to avoid tasking a commissioner or board member with the role of hearing administrator, as those officials will be occupied with the substance of the applicant's proposal and deliberations.

9. Establish a Hearing Outline. To set expectations and maintain order, communities should clearly state the legal rationale for conducting a remote hearing and communicate the hearing's steps. Communities should consider establishing and distributing an outline to their hearing bodies before the hearing begins and relying on the outline to guide the hearing.

10. Remain Flexible and Encourage Participation. Zoning hearings, whether conducted remotely or in person, entail greater due process rights than other public meetings. Communities must keep this in mind when conducting remote hearings. Communities should give greater consideration to conducting hearings over multiple dates to provide the public a fair and reasonable opportunity to participate. Hearings should not be concluded due to technical issues or other matters related to the remote hearing platform(s) the municipality uses. Taking an inclusive, flexible approach will allow for more meaningful proceedings and reduce the likelihood of potential litigation.

## Quorum Forum 38: Remote Public Hearings

Join us on May 5, 2020 at 12pm to discuss remote public hearings during a live recording of Ancel Glink's Quorum Forum podcast! In partnership with the APA-IL Legislative Committee, David Silverman and Greg Jones will share best practices for virtual public meetings and ensuring due process during public hearings with limited physical attendance. Appropriately, our podcast will be recorded in an online meeting, and participants will be invited to share their questions with us during the event. Space will be limited, so [click here](#) to register today!



### About Ancel Glink

For more information visit Ancel Glink's web-site at [www.ancelglink.com](http://www.ancelglink.com) or email us at [inthezone@ancelglink.com](mailto:inthezone@ancelglink.com). To stay up to date on pending legislation, recent cases, and other topics of interest to local governments, you can also visit our blog [Municipal Minute](#), and listen to Ancel Glink's [Quorum Forum](#) podcast. You can follow the Land Use Group on Twitter [@AncelGlinkLand](#), or like Ancel Glink: Land Use on [Facebook](#).

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